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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,243	12/15/2000	Lok Yan Leung	AUS920000814US1	2747

35525 7590 12/28/2004

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EXAMINER

COLIN, CARL G

ART UNIT	PAPER NUMBER
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2136

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/738,243	Applicant(s) LEUNG ET AL.	
	Examiner Carl Colin	Art Unit 2136	

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Response to Arguments

1. In response to communications filed on 9/23/2004, Applicant amends claims 1, 7, 8, 11, 16-20, 25-26, 32-33, 36, and 41-46. The following claims 1-46 are presented for examination.
2. The amendments to the specification, filed on 9/23/2004 have been considered. With regard to the use of JAVA trademark, on page 8, each letter should be capitalized. In response to the amended claims, the claim objection has been withdrawn.
- 2.1 Applicant's remarks, pages 14-22, filed on 9/23/2004, with respect to the rejection of claims 1-46 have been fully considered, but are moot in view of the new ground(s) of rejection. Applicant has amended claims 1, 7, 8, 11, 16-20, 25-26, 32-33, 36, and 41-46 to further limit the claimed invention. Upon further consideration a new ground of rejection is made in view of Yin.

Specification

3. The use of the trademark JAVA has been noted in this application on page 8. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks. Appropriate correction is required

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4.1 **Claims 1-46** are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,028,939 to **Yin**.

4.2 **As per claims 1, 11, 20-24, 25, 26, 36, 45, and 46, Yin** discloses a method and system in a data processing system for executing cryptographic operations comprising: a bus system; a communications unit connected to the bus, wherein data is sent and received using the communications unit; a memory connected to the bus system, wherein a set of instructions are located in the memory; and a processor unit connected to the bus system, wherein the processor

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unit executes the set of instructions; wherein the bus system includes a primary bus and a secondary bus (see figures 6-10 with appropriate description); wherein the processor unit includes a processor or a plurality of processors, wherein the communications unit is an Ethernet adapter, for example (see column 10, line 60 through column 9, line 21); responsive to a request to perform a cryptographic operation, dynamically selecting between one of a software process and a hardware process within the data processing system for performing the cryptographic operation based on a policy to form a selected process, for example (see column 10, lines 12-40 and columns 11-12); and performing the cryptographic operation using the selected process, for example (see column 9, lines 5-50 and column 12).

As per claims 2, 19, 27 and 44, Yin discloses the limitation of wherein the policy includes selecting the one based on available resources to perform the cryptographic operation, wherein the identified available resources include available processing resources and memory, for example (see column 7, lines 14-30).

As per claims 3, 10, 28, and 35 Yin discloses the limitation of wherein the policy includes selecting the one resulting in a fastest completion of the cryptographic operation, for example (see column 10, lines 12-40).

As per claims 4 and 29, Yin discloses the limitation of wherein the selecting step includes: selecting the one using a preference associated with the request, for example (see column 10, lines 12-40).

As per claims 5 and 30, Yin discloses the limitation of wherein the preference is for the hardware process to performing the cryptographic operation, for example (see column 10, lines 12-40 and column 9, lines 5-30).

As per claims 6, 15, 31, and 40, Yin discloses the limitation of wherein the cryptographic operation is an encryption of data using a key, for example (see column 12, lines 11-25 and lines 62-65).

As per claims 7, 16, 32, and 41, Yin discloses the limitation of wherein the step of performing the cryptographic operation includes converting the key to a form useable by the selected process if the key is in a unusable form by the selected process, for example (see column 12, lines 5-25 and lines 45-67).

As per claims 8, 17, 33, and 42, Yin discloses selecting more efficient hardware or software operations or appropriate process depending on availability and cost performance etc. and further discloses that key table look-up can be allocated to be perform in software rather than hardware in some cases as constant changing data that meets the recitation of wherein the key is a hardware key and the selected process is the software process and further comprising: converting the hardware key into a software form useable by the software process for performing the cryptographic operation, for example (see column 12, lines 45-62).

As per claims 9 and 34, Yin discloses the limitation of wherein the policy comprises a set of rules used to minimize available resources consumed in performing the cryptographic operation, for example (see column 12, lines 25-67; column 8, line 59 through column 9, line 30).

As per claims 12 and 37, Yin discloses the limitation of wherein the cryptographic operation is one of a message digest and a public-private key encryption, for example (see column 8, line 59 through column 9, line 30).

As per claims 13, 14, 38 and 39, Yin discloses the limitation of wherein the request is received from the application using an application program interface call made by the application, for example (see column 11, lines 24-67).

As per claims 18 and 43, Yin discloses the software process providing key to the hardware for performing cryptographic operation that meets the recitation of wherein the key is a software key and the selected process is the hardware process and further comprising: converting the software key into a hardware form useable by the software process for performing the cryptographic operation, for example (see column 12, lines 10-25).

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

5.1 The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as the art discloses processing system of selecting one of hardware and software process associated with a policy.

US Patents: 6,672,505 Steinmetz 6,671,809 Perona et al
6,523,119 Pavlin et al.

5.2 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl Colin whose telephone number is 571-272-3862. The examiner can normally be reached on Monday through Thursday, 8:00-6:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

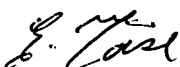
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

cc

Carl Colin

Patent Examiner

December 17, 2004


EMMANUEL L. MOISE
PRIMARY EXAMINER